

EXHIBIT E-3

168. ~~160.~~ Notably, one of these exhibits, "Exhibit I," was a one-page summary of Johnson's alleged prior performance-enhancing substances testing dates.

169. ~~161.~~ Johnson previously requested all of the underlying documents regarding his testing, including dates of his tests, but the NFLMC denied his request and Carter upheld the NFLMC's refusal to produce this information.

170. ~~162.~~ Carter then admitted Exhibit I, over Johnson's objection and despite that Carter previously upheld the NFLMC's refusal to produce documents underlying the information included in Exhibit I, as irrelevant, and Johnson's testimony that the information in Exhibit I was both incomplete and incorrect.

171. ~~163.~~ The NFLMC failed to meet its burden of demonstrating a positive test result obtained pursuant to a test authorized under the 2015 Policy and "conducted in accordance with the collection procedures and testing protocols of the Policy and the protocols of the testing laboratory (herein collectively 'the Collection Procedures')." Ex. A at p. 16.

172. ~~164.~~ Because the NFLMC failed to meet this burden and because the test was not authorized under the 2015 Policy, Johnson was entitled to have Carter grant his appeal based on the burden shifting paradigm expressly provided in Section 11 of the 2015 Policy.

173. ~~165.~~ The Award renders the express provisions of the 2015 Policy null and void and, by so doing, violated the limitations on Carter's jurisdiction set forth by the 2015 Policy and Section 10 of the FAA.

**V. CARTER, INCLUDING HIS LAW FIRM ~~WILMER~~
~~HALE~~WILMERHALE, WAS EVIDENTLY PARTIAL TO
THE NFLMC AND CORRUPT**

174. ~~166.~~ The 2015 Policy requires that "all appeals under Section 6 of this Policy shall be heard by third-party arbitrators not affiliated with the NFL, NFLPA or [NFL franchises] Clubs." Ex. A at p. 13.

175. ~~167.~~ Upon information and belief, at the time of Johnson's appeal, Carter was otherwise affiliated with the National Football League and the NFLPA by virtue of his position as an arbitrator under the National Football League and NFLPA's wholly separate policy titled, "National Football League Policy and Program on Substances of Abuse 2015."

176. ~~168.~~ Upon information and belief, there was no writing in which the NFLMC and NFLPA agreed to modify the 2015 Policy concerning Section 9 of the 2015 Policy.

177. ~~169.~~ Regardless, the 2015 Policy contains no mechanism to alter its terms.

178. ~~170.~~ Carter works for the law firm of ~~Wilmer Hale~~ WilmerHale.

179. ~~171.~~ Upon information and belief, ~~Wilmer Hale~~ WilmerHale has and does represent the NFLMC and National Football League ~~franchises~~ clubs.

180. ~~172.~~ Upon information and belief, ~~Wilmer Hale was retained by~~ WilmerHale was representing the National Football League ~~to investigate,~~ while Johnson's appeal was pending before Carter.

181. Upon information and belief, the National Football League retained WilmerHale for other matters, including, but not limited to, investigating the National Football League's handling of the Ray Rice domestic violence situation.

182. ~~173.~~ Upon information and belief, the National Football League retained ~~Wilmer Hale~~ WilmerHale regarding its handling of the Ray Rice domestic violence situation on September 10, 2014.

183. ~~174.~~ A key witness in that investigation was Birch.

184. ~~175.~~ ~~Wilmer Hale~~ WilmerHale ultimately exonerated the National Football League relative to its handling of the Ray Rice situation and specifically Birch's conduct.

185. ~~176.~~ Upon information and belief, that investigation involved interviewing over 200 National Football League employees, reviewing over ~~3 million~~ 3,000,000 documents, and imaging Birch's electronic devices.

186. ~~177.~~ During that investigation, ~~Wilmer-Hale~~ WilmerHale reported to the owners of National Football League ~~franchises~~ clubs Pittsburgh Steelers and New York Giants.
187. ~~178.~~ The investigation of the National Football League's conduct relative to Ray Rice ended on January 8, 2015.
188. ~~179.~~ Upon information and belief, the National Football League paid ~~Wilmer-Hale~~ WilmerHale in excess of a million dollars for its efforts related to the investigation.
189. ~~180.~~ Upon information and belief, shortly after the conclusion of ~~Wilmer-Hale~~ WilmerHale's investigation, Birch sent a letter to Carter at ~~Wilmer-Hale~~ WilmerHale inviting him to serve as an arbitrator under both the then current National Football League Policy on Performance-Enhancing Substances and the then current National Football League Policy and Program on Substances of Abuse. At the time of Johnson's arbitration, Carter remained an arbitrator under both of the then applicable policies.
190. ~~181.~~ Upon information and belief, ~~Wilmer-Hale~~ WilmerHale has provided other services to the National Football League and its ~~franchises~~ clubs.
191. Upon information and belief, Carter sent an engagement letter to the National Football League and the NFLPA, the acceptance of which would violate the terms of the 2015 Policy.
192. Upon information and belief, the National Football League and the NFLPA accepted Carter's engagement letter, despite that doing so resulted in a violation of the terms of the 2015 Policy.
193. Carter denied Johnson's discovery requests concerning the arbitrators under the 2015 Policy and the arbitrator selection process.
194. By accepting Carter's engagement letter, the NFLPA violated its Constitution by agreeing to a modification to the 2015 Policy without submitting the modification to its Executive Committee and/or Board of Representatives.

195. Upon information and belief, Carter was aware of non-trivial dealings between his firm WilmerHale and the National Football League and/or its member clubs.

196. Carter failed to disclose to Johnson the material relationship his firm WilmerHale had with the National Football League and/or its member clubs.

197. Carter published at least one work espousing the virtues and importance of disclosing conflicts to parties.

198. Upon information and belief, Carter failed to conduct an appropriate conflicts check prior to agreeing to preside over Johnson's appeal.

199. Carter never made any conflict disclosure to Johnson.

200. ~~182.~~ Prior to the arbitration in this matter, Carter never disclosed to Johnson any affiliation that either he or his firm had with the NFLPA, the National Football League, or any National Football League franchise club.

201. ~~183.~~ Carter is otherwise "affiliated with the NFL, NFLPA or [NFL-franchises] Club."

FIRST CAUSE OF ACTION
Vacatur of the Award pursuant to the LMRA § 301
Because it Fails to Draw its Essence from the
Agreement

202. ~~184.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

203. ~~185.~~ Carter's Award is illegitimate because it does not draw its essence from the collectively bargained agreement (i.e., the 2015 Policy).

204. ~~186.~~ Carter failed to apply the burden shifting paradigm expressly provided for in the 2015 Policy.

205. ~~187.~~ Carter denied Johnson access to relevant information without bases or authorization in the 2015 Policy. Carter's rulings on discovery ignored the 2015 Policy's express provisions entitling Johnson to information critical to mounting an effective defense

206. ~~188.~~ Because of Carter's failure to adhere to the discovery and burden shifting paradigms expressly provided in the 2015 Policy, the Award cannot be said to arguably construe or apply the 2015 Policy. Carter's Award conflicts with express terms of the 2015 Policy.

207. ~~189.~~ The arbitral discovery and hearing procedures were so errant as to amount to affirmative misconduct and to deny Johnson the fundamentally fair adjudication expressly guaranteed in the 2015 Policy.

208. ~~190.~~ Carter's Award conflicts with the express terms of the 2015 Policy, imposed additional requirements and limitations on Johnson that were not expressly provided for in the 2015 Policy and that are not rationally supported by or derived from the 2015 Policy, and improperly reflects Carter's own brand of industrial justice.

209. ~~191.~~ The Award is contradictory to the 2015 Policy's commitment to "transparency in the Policy's procedures, including the scientific methodologies that underlie the Policy, the appeals process and the basis of discipline imposed" and to Defendants' claimed commitment to "a fair system of adjudication." Ex. A at p. 2.

210. ~~192.~~ The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests.

SECOND CAUSE OF ACTION
Vacatur of the Award pursuant to the LMRA § 301
Because the Arbitration Process was Fundamentally
Unfair

211. ~~193.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

212. ~~194.~~ The NFLPA and the NFLMC, individually and in collusion, deliberately withheld relevant and pertinent information from Johnson in order to impede his ability to mount his appeal effectively, or otherwise undermine Johnson.

213. The NFLPA and the NFLMC, individually and in collusion, conspired and engaged in fraudulent, dishonest, and misleading conduct that substantially tainted, contributed to, and more than likely affected the erroneous Award.

214. ~~195.~~The NFLPA and NFLMC, individually and in collusion, deliberately concealed information related to the arbitrators under the 2015 Policy ~~and~~, disregarded the arbitrator selection process, and tried to undermine Johnson's challenge of Carter.

215. ~~196.~~The NFLPA and NFLMC, individually and in collusion, deliberately concealed from Johnson their failure to satisfy their obligation to establish and/or approve the procedures detailed in Section 16 of the 2015 Policy.

216. ~~197.~~The NFLMC and NFLPA, individually and in collusion, deliberately and repeatedly refused to provide Johnson with deviations from substantive provisions of the 2015 Policy.

217. Upon information and belief the NFLMC representative involved in colluding with the NFLPA, includes, but is not limited to, Kevin Manara.

218. Upon information and belief the NFLPA representatives involved in colluding with the NFLMC, includes, but is not limited to, Heather McPhee and Todd Flanagan.

219. ~~198.~~Johnson improperly was refused discovery under Section 11 of the 2015 Policy critical to mounting an effective defense.

220. The NFLPA's actions or omissions substantially tainted, contributed to, and more than likely affected the erroneous Award.

221. ~~199.~~The Award is contradictory to the 2015 Policy's requirement of "a fair system of adjudication." Ex. A at p. 2.

222. ~~200.~~The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests.

**THIRD CAUSE OF ACTION
Vacatur of the Award pursuant to the FAA § 10(a)(1)**

Because the Award Was Procured by the NFLMC and the NFLPA through Corruption, Fraud, or Undue Means

223. ~~201.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

224. ~~202.~~ The NFLMC misled Johnson and Carter as to the existence of the testing laboratory protocols referenced throughout the 2015 Policy.

225. ~~203.~~ The NFLMC misled Johnson and Carter as to the claimed production of the protocols referenced in the 2015 Policy or used by the UCLA Lab, as the NFLMC did not produce these documents.

226. ~~204.~~ The NFLMC misled Johnson and Carter when it stated that World Anti-Doping Agency or WADA procedures, protocols, or policies did not apply to Johnson's tests.

227. ~~205.~~ Upon information and belief, the NFLMC further misled Johnson and Carter when it claimed there was a written agreement regarding the CFT.

228. ~~206.~~ Despite refusing to produce documents regarding Johnson's prior performance- enhancing substances testing history, claiming such documents were irrelevant, the NFLMC

submitted Exhibit I during the hearing on October 4, 2016. Exhibit I was both incomplete and inaccurate.

229. ~~207.~~ Upon information and belief, the NFLMC misled Johnson and Carter in other ways.

230. ~~208.~~ The NFLMC improperly procured the Award through corrupt, fraudulent, and undue means.

231. The NFLPA's actions or omissions related to the NFLMC's procurement of the Award through corrupt, fraudulent, and undue means more than likely affected the Award.

232. ~~209.~~ The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests.

FOURTH CAUSE OF ACTION

Vacatur of the Award pursuant to the FAA § 10(a)(2)

Because there was Evident Partiality or Corruption in the Arbitrator

233. ~~210.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

234. ~~211.~~ Carter was not properly seated as an arbitrator per the 2015 Policy. Carter and his firm are otherwise affiliated with the NFLPA, the National Football League, and National Football League ~~franchises~~clubs.

235. ~~212.~~ Carter failed to disclose to Johnson any potential conflict of interest prior to Johnson's arbitration nor did he disclose any potential conflicts that he or his firm had. Carter's failure to disclose demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2).

236. Carter failed to run an appropriate conflict check regarding his appointment to preside over Johnson's appeal or notify Johnson he did not intend to do so. Carter's failure to run a conflict check or notify Johnson of his failure, despite being aware of non-trivial dealings between his firm WilmerHale and the National Football League, demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2).

237. Johnson could not and did not waive conflicts Carter improperly failed to disclose.

238. Carter further concealed his improper appointment under the 2015 Policy by denying Johnson discovery concerning the arbitrator selection process itself.

239. ~~213.~~ Carter's refusal to force the NFLMC to produce material and relevant information permitted by the 2015 Policy (including but not limited materials and information related to Johnson's testing information and his placement into the reasonable cause testing program) essential to Johnson's defense demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2).

240. ~~214.~~ Carter's refusal to take a negative inference for the NFLMC's refusal to produce information he ordered produced demonstrates his partiality or corruption in violation of 9

U.S.C. Section 10(a)(2).

241. ~~215.~~ Carter's refusal to follow the burden shifting paradigm set forth in the 2015 Policy demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2).

242. ~~216.~~ Carter's refusal to require the NFLMC to provide actual evidence of a CFT agreement demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2).

243. ~~217.~~ Carter's reliance upon Exhibit I in his Award demonstrates his partiality or corruption in violation of 9 U.S.C. Section 10(a)(2). This is especially true given that Carter denied Johnson's request for the information contained in Exhibit I, including documents underlying the information contained in Exhibit I, via discovery.

244. ~~218.~~ The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests

FIFTH CAUSE OF ACTION

Vacatur of the Award pursuant to the FAA § 10(a)(3)

Because of Arbitrator Misconduct in Refusing to Hear Evidence Pertinent and Material to the Controversy and Other Misbehavior by which Johnson's Rights Were Prejudiced

245. ~~219.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

246. ~~220.~~ Carter violated the express terms of Section 11 of the 2015 Policy by unduly restricting the scope of evidence available to Johnson for his appeal.

247. ~~221.~~ Carter's refusal to compel the NFLMC to produce documents critical to Johnson's appeal, including, but not limited to, documents related to his arbitrator selection, Johnson's testing history, the date of his placement in the reasonable cause testing program by Lombardo in Ohio, and, ultimately, the testing laboratory protocols deprived Johnson of a

fundamentally fair hearing.

248. ~~222.~~ Carter refused to require the NFLMC to produce the alleged agreement regarding the CFT, but accepted, at face value, the NFLMC's bald non-evidentiary statement that such an agreement existed.

249. ~~223.~~ After ordering the NFLMC to produce the relevant laboratory protocols and hearing testimony conclusively demonstrating that such protocols did exist, Carter improperly still refused to force the NFLMC to produce the subject laboratory protocols or to take a negative inference related the NFLMC's refusal to comply Carter's order requiring the NFLMC to produce them.

250. ~~224.~~ Carter failed to adhere to and ultimately ignored the burden shifting paradigm in the 2015 Policy.

251. ~~225.~~ As a result of Carter's exclusion of relevant and pertinent evidence material to the controversy and failure to adhere to the express procedural provisions of the 2015 Policy, Johnson was denied a fundamentally fair hearing and was instead subjected to an arbitration scheme so deeply flawed as to forever preclude the possibility of a fair outcome.

252. ~~226.~~ The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests.

SIXTH CAUSE OF ACTION
Vacatur of the Award pursuant to the FAA § 10(a)(4)
Because the Arbitrator Exceeded His Authority under the 2015
Policy

253. ~~227.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

254. ~~228.~~ Carter was improperly seated, designated, and/or assigned to hear Johnson's appeal and lacked proper authority to do so.

255. ~~229.~~ Carter failed to allow Johnson access to relevant documents and information to which he was entitled under the 2015 Policy.

256. ~~230.~~ Carter failed to require the NFLMC to produce reliable, authenticated evidence, including, but not limited to, alleged agreements to deviate from the express terms of the 2015 Policy and based his ruling on non-evidentiary statements.

257. ~~231.~~ Carter failed to grant Johnson's request for an adverse inference to which he was entitled under the 2015 Policy; namely, that the failure of the NFLMC to produce protocols, procedures, and/or policies necessitated a finding that the protocols, procedures, and/or policies were not followed.

258. ~~232.~~ Carter failed to adhere to the burden shifting paradigm required by the 2015 Policy.

259. ~~233.~~ Carter failed to take a negative inference against the NFLMC for its refusal to produce documents, including, but not limited to, the Collection Procedures detailed in the 2015 Policy.

260. ~~234.~~ Carter permitted the NFLMC to introduce evidence exclusively on rebuttal that the 2015 Policy required the NFLMC to introduce as part of its case-in-chief.

261. ~~235.~~ Carter admitted Exhibit I into the arbitration record and relied heavily on it in his Award, despite denying Johnson's discovery requests for the information contained in Exhibit I, including underlying documentation, without authority in the Policy to do so.

262. ~~236.~~ Carter improperly limited the testimony of witnesses with actual knowledge of the facts underlying Johnson's arbitration. For example, Carter impermissibly precluded testimony concerning when Johnson was placed in the reasonable cause testing program.

263. ~~237.~~ The Award has resulted in serious, substantial, material harm to Johnson and his rights and interests.

SEVENTH CAUSE OF ACTION Breach of Contract by the NFLMC pursuant to LMRA § 301

264. ~~238.~~ Johnson incorporates by reference the averments of the preceding

265. ~~239.~~ Johnson's July 12, 2016 test violated the 2015 Policy.

266. ~~240.~~ The NFLMC violated the 2015 Policy by not appointing the required minimum number of arbitrators.

267. ~~241.~~ The NFLMC violated the 2015 Policy by failing to seat properly an arbitrator to hear Johnson's appeal.

268. ~~242.~~ The NFLMC violated the 2015 Policy by not having Johnson's test results verified by the CFT.

269. ~~243.~~ The NFLMC violated the 2015 Policy by refusing to provide Johnson with the Collection Procedures, including, but not limited to, the testing laboratory protocols.

270. ~~244.~~ The NFLMC violated the 2015 Policy by prohibiting the Independent Administrator from providing documents in the Independent Administrator's control and custody concerning Johnson's personal health, medical, and testing information to Johnson. The NFLMC violated the 2015 Policy by prohibiting the Independent Administrator from providing Levine the documents Levine requested.

271. ~~245.~~ The NFLMC violated the 2015 Policy by prohibiting the Independent Administrator from reporting equally, promptly, and contemporaneously with the NFLPA.

272. ~~246.~~ The NFLMC violated the 2015 Policy by eliminating or effectively eliminating the CFT position or otherwise failing to abide by requirements related to the CFT.

273. ~~247.~~ The NFLMC violated the 2015 Policy by refusing to provide or directing its agents not to provide materials necessary for Levine to observe effectively the "B" sample test.

274. ~~248.~~ The NFLMC violated the 2015 Policy by not establishing the procedures set forth in Section 16 of the 2015 Policy or otherwise abiding by the terms of the 2015 Policy.

275. The NFLMC's actions and/or omissions violated the 2015 Policy.

276. ~~249.~~ The NFLMC's actions have resulted in serious, substantial, material harm to Johnson and his rights and interests.

EIGHTH CAUSE OF ACTION
Breach of Duty of Fair Representation by the
NFLPA pursuant to the LMRA § 301 and NLRA
§ 8(b)

277. ~~250.~~ Johnson incorporates by reference the averments of the preceding paragraphs, as if fully restated herein.

278. ~~251.~~ The NFLPA abdicated its statutory responsibility to provide Johnson with information in its possession relevant to Johnson's appeal.

279. ~~252.~~ The NFLPA coerced Johnson to waive his rights under the 2015 Policy, including his right to appeal pending discipline.

280. ~~253.~~ The NFLPA willfully and fraudulently misled Johnson as to its communications with the NFLMC regarding application of the 2015 Policy terms upon which Johnson based his appeal.

281. ~~254.~~ The NFLPA refused to enforce the express arbitrator selection provisions of the 2015 Policy and/or colluded in the NFLMC's breach of those provisions.

282. ~~255.~~ The NFLPA allowed and/or colluded in the NFLMC's elimination or effective elimination of the CFT position and its failure to abide by the 2015 Policy's requirements related to the CFT, without executing a written agreement and without notifying Johnson or other National Football League players.

283. ~~256.~~ The NFLPA allowed and/or colluded in the NFLMC's assertion of unilateral control over Johnson's personal medical and health information and testing history under the 2015 Policy.

284. ~~257.~~ The NFLPA allowed and/or colluded in the NFLMC's unilateral exercise of control over performance-enhancing substances testing and the appeals process in a manner far outside the range of reasonableness for the behavior of an exclusive bargaining

285. ~~258.~~ The NFLPA allowed and/or colluded in the NFLMC's exclusive exercise of control of the Independent Administrator.

286. ~~259.~~ The NFLPA allowed and/or colluded in the NFLMC's prohibiting the Independent Administrator from reporting equally, promptly, and contemporaneously with the NFLPA.

287. ~~260.~~ The NFLPA retaliated against Johnson because of its public dispute with Johnson over the poor quality of the NFLPA's representation. The NFLPA did so out of personal animosity, by abdicating its representative duties and abandoning Johnson to the caprice of the NFLMC. The NFLPA's retaliation, includes, but is not limited to:

- a. Refusing to assist or support Johnson with his appeal;
- b. Refusing to provide Johnson with information and documents he requested;
- c. Refusing to provide Johnson a complete copy of the 2015 Policy; and
- d. Issuing an inaccurate statement against Johnson's interest.

288. ~~261.~~ The NFLPA failed to review the documentation of Johnson's performance-enhancing substances test results prior to the close of the five-day period in which Johnson had a right to appeal his discipline.

289. Any attempted or actual waiver of Carter's potential conflicts of interest by the NFLPA was improper and prejudiced the NFLPA's members, including Johnson.

290. ~~262.~~ The NFLPA failed to audit or monitor compliance with the 2015 Policy, as it is required to do by the 2015 Policy.

291. ~~263.~~ The NFLPA attended but provided no affirmative support, assistance, or counsel to Johnson in the course of the September 22, 2016 ~~telephone conference~~ hearing concerning discovery disputes with Carter.

292. To the detriment of Johnson, the NFLMC relied on the NFLPA's silence to

293. ~~264.~~ The NFLPA attended but provided no affirmative support, assistance, or counsel to Johnson in the course of the October 4, 2016 arbitration hearing.

294. To the detriment of Johnson, the NFLMC relied on the NFLPA's silence to bolster its arguments during the October 4, 2016 hearing.

295. Despite a request from Johnson, the NFLPA refused to affirmatively state its support for Johnson during the October 4, 2016 hearing or otherwise explain its silence.

296. The NFLPA's silence throughout Johnson's appeal process negatively affected his chances of successfully appealing his discipline and more than likely affected the Award.

297. ~~265.~~ The NFLPA did nothing to protect the rights of players, including Johnson, from being arbitrarily retained in the reasonable cause testing program beyond the limits contemplated in the 2015 Policy.

298. Throughout his appeal, Johnson communicated with attorneys of the NFLPA who were unaware of the essential elements of the 2015 Policy, had no or denied Johnson access to information and documents allegedly modifying the 2015 or necessary for its implementation, and were unable to advise Johnson about his basis rights under the 2015 Policy.

299. ~~266.~~ By its actions and failures to act, the NFLPA has deprived Johnson of all avenues of meaningfully protecting his interests and effectively abandoned him.

300. ~~267.~~ The NFLPA handled Johnson's appeal in a perfunctory manner.

301. ~~268.~~ The NFLPA acted disloyally, in bad faith, and arbitrarily and capriciously. The NFLPA's actions were so far outside the widest range of reasonableness for a union's conduct such that the NFLPA's actions were irrational.

302. The NFLPA's actions and/or omissions substantially tainted, contributed to, and more than likely affected the erroneous Award.